OM 019-2003 (5110) NOTIFICATION PROCEDURES FOR INMATES RELEASING FROM FIFTH CIRCUIT INSTITUTIONS

Operations Memorandum

NUMBER: 019-2003 (5110)
DATE: 12/30/2003
SUBJECT: Notification Procedures for Inmates Releasing from Fifth Circuit Institutions

EXPIRATION DATE: 12/30/2004

1. **PURPOSE AND SCOPE.** This Operations Memorandum extends the notification requirements contained in OM 020-2002 pursuant to 18 U.S.C. § 4042(b) for inmates releasing to a term of supervision from an institution or facility located in the Fifth Circuit, in light of a recent Fifth Circuit Court of Appeals decision, Henrikson v. Guzik, 249 F.3d 395 (5th Cir. 2001).

18 U.S.C. § 4042(b), requires in part that the Bureau notify state and local law enforcement officials at least five calendar days prior to releasing to Supervised Release, probation, or parole, prisoners who have been convicted of a "drug trafficking crime" or a "crime of violence." Procedures in the Program Statement Notification of Release to State and Local Law Enforcement Officials specify that the Bureau will notify State and Local law enforcement officials when the current offense conduct is for a current or prior crime of violence and/or a current or prior federal drug trafficking offense.

In Henrikson, the Fifth Circuit Court of Appeals held that 18 U.S.C. § 4042(b) required Bureau staff to notify state and local law enforcement officials only if the inmate's **current** conviction was for a drug trafficking crime or crime of violence.

*   That circuit held that §4042(b) did **not** require notifications based on **prior** convictions, so the Program Statement's language with respect to that specific requirement was invalidated.

*   **This ruling only affects notification procedures for staff in Fifth Circuit institutions** (see Section 3.b.). The Fifth Circuit covers all institutions in Louisiana, Mississippi, and Texas.

2. **DIRECTIVE REFERENCED**

   PS 5110.15   Notification of Release to State and Local
                 Law Enforcement Officials (8/30/00)

3. **APPLICABILITY OF *HENRIKSON*.** Staff should consider the
following general guidelines:

  a. This Operations Memorandum applies to all institutions,
which also includes Community Corrections Management offices,
halfway houses, and private facilities in the Fifth Circuit.

  b. The sentencing jurisdiction is not relevant to the
application of the <u>Henrikson</u> decision, only the location of the
releasing entity is relevant.

   Example: Staff at USP Beaumont must comply with the
              mandates of the <u>Henrikson</u> decision when releasing
              an inmate who was sentenced in the Southern
              District of New York (Second Circuit) or any other
              district. Conversely, staff at USP Allenwood
              releasing an inmate who was sentenced in the
              Southern District of Texas (Fifth Circuit) are not
              bound by the <u>Henrikson</u> decision, regardless of
              where the inmate's supervision will be.

4. **POLICY CHANGES FOR 18 U.S.C. § 4042(b) NOTIFICATIONS.** The
notification procedures outlined in Section 9 of the Program
Statement <u>Notification of Release to State and Local Law
Enforcement Officials</u> are as follows:

   9. **APPLICABILITY.** The procedures in this Program Statement
   apply to any prisoner in Bureau custody who is:

     a. To be released to Supervised Release, probation, or
   parole; and

     b. (1) whose **current** offense of conviction is a "drug
   trafficking crime" or a "crime of violence" as defined in
   Sections 8.a. or 8.b.

       (2) whose criminal **history** as determined by staff, in
   the exercise of professional judgment, includes a conviction
   for "drug trafficking" or a "crime of violence" as defined
   in Sections 8.a. or 8.b. For "drug trafficking crimes,"
   staff are to consider only federal convictions as a basis

for notification. For "crimes of violence," staff are to
consider both state and federal convictions as a basis for
notification.

The Henrikson decision makes the following changes in the above
notification procedures:

- Staff preparing to release inmates from any institution
  or facility located within the Fifth Circuit will make
  notifications only for such inmates covered by Section
  9.b.(1). Fifth Circuit institutions **will not apply
  Section 9.b.(2)** to inmates releasing from the
  institution.

5. **SENTRY PROCEDURES.** Two SENTRY CMA assignments have been
specifically created to identify Fifth Circuit cases.

ASSIGNMENT	DESCRIPTION	GROUP CODE
V94 PV5	**V94 PAST VIOL-NO NOTIF HSED5TH**	**VVP**
	Previously convicted for a crime of violence regardless of offense date and housed in an institution in the Fifth Circuit. Notifications are prohibited pursuant to Henrikson.	
V94 PD5	**V94 PAST DRG-NO NOTIF HSED 5TH**	**VDP**
	Previously convicted for a **federal** drug trafficking crime, regardless of offense date and housed in an institution in the Fifth Circuit. Notifications are prohibited pursuant to Henrikson.	

Staff at institutions in the Fifth Circuit **must** run the
appropriate rosters controlling for past violence and drug
trafficking, and replace the assignments for those inmates
retrieved with the applicable new assignment. When an **inmate
transfers** into or out of a Fifth Circuit institution, unit staff
at the **receiving** institution must assess the current assignment
and enter the proper assignment and document changes on the
Inmate Central File Activity Sheet.

6. **NOTIFICATION TO INMATES.** If changes are made regarding
notification, they must be discussed with the inmate and
documented on the Program Review Report. A copy of the Program
Review Report will be placed in Section 5 of the Inmate Central
File.

7. **ACTION.** File a copy of this OM in front of PS 5110.15, <u>Notification of Release to State and Local Law Enforcement Officials</u>. Due to the Fifth Circuit ruling in <u>Henrikson</u>, the procedures contained in this Operations Memorandum remain in effect until revised, cancelled, or otherwise superceded by Bureau directive.

8. **POSTING.** This Operations Memorandum will be posted prominently on all Inmate Bulletin Boards and in the inmate law library.

          /s/   /s/
     Michael B. Cooksey   Christopher Erlewine
     Assistant Director   Assistant Director/
     Correctional Programs Division   General Counsel